

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FILED  
IN CLERKS OFFICE

2005 FEB 15 P 2:46

UNITED STATES OF AMERICA, )  
Plaintiff, )  
v. )  
\$6,442.00 IN U.S. CURRENCY, )  
Defendant. )

04 CV 12655 RWZ

U.S. DISTRICT COURT  
DISTRICT OF MASS

MOTION TO DISMISS

Now comes Claimant Hugo Carmona and moves this Honorable Court to dismiss the government's forfeiture complaint and enter an order requiring the government to return the \$6,442.00 in U.S. Currency seized from Mr. Carmona forthwith.

In support of this motion the Claimant contends that:

1. In violation of 18 U.S.C. § 983(a)(3)(A), the government waited more than 90 days after Mr. Carmona filed his § 983(a)(2)(A) claim and judicial forfeiture demand before it filed the instant forfeiture complaint. Pursuant to §983(a)(3)(B), the seized currency must promptly be released and no further action to effect a civil forfeiture of the currency may be taken by the government.
2. The government's complaint is deficient. It fails to allege facts sufficient to establish probable cause that the defendant currency constitutes money furnished or intended to be furnished by a person in exchange for a controlled substance, in violation of Title 21, proceeds traceable to such an exchange, and/or money used or intended to be used

to facilitate a violation of Title 21. Accordingly, the complaint is deficient pursuant to 21 U.S.C. § 881(d) and 19 U.S.C. § 1615. The Court erred when, on December 30, 2004, it found probable cause for forfeiture and should not have certified the government's complaint and authorized the Clerk to issue a Warrant and Monition. No person should be required to answer the government's defective complaint and the complaint should be dismissed.

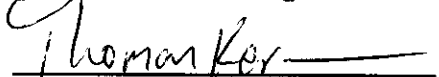
**REQUEST FOR HEARING.**

Pursuant to LR 7.1(D), claimant Carmona believes that oral argument may assist the court and wishes to be heard.

**Respectfully Submitted**

**HUGO CARMONA**

**By his attorney:**

A handwritten signature in cursive script, appearing to read "J. Thomas Kerner", is written over a horizontal line.

**J. Thomas Kerner**

**MA BBO # 552373**

**Attorney at Law**

**230 Commercial Street**

**First Floor**

**Boston, MA 02109**

**(617) 720-5509**

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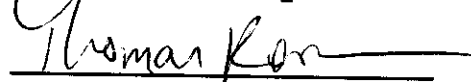
RULE 7.1 CERTIFICATION

Now comes counsel for claimant Hugo Carmona and certifies that the parties have conferred and have attempted in good faith to resolve or narrow the issues raised in the claimant's motion to dismiss.

Respectfully Submitted

HUGO CARMONA

By his attorney:



J. Thomas Kerner

MA BBO # 552373

Attorney at Law

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Boston, MA 02109

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CERTIFICATE OF SERVICE

Now comes counsel for claimant Hugo Carmona and certifies  
that a copy of the attached filing has been served on the United  
States by sending a copy to:

Ms. Shelbey D. Wright  
Assistant U.S. Attorney  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
(617) 748-3100

Date

2/10/05

Respectfully Submitted  
HUGO CARMONA

By his attorney:



J. Thomas Kerner  
MA BBO # 552373  
Attorney at Law  
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First Floor  
Boston, MA 02109  
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